Editor's note: 84 I.D. 198

RIO BLANCO NATURAL GAS COMPANY

IBLA 75-184 Decided May 19, 1977

Appeal from decision of the Colorado State Office, Bureau of Land Management, holding that oil and gas lease C-1490 terminated by cessation of production.

Reversed and remanded.

1. Oil and Gas Leases: Drilling ! ! Oil and Gas Leases: Extensions ! ! Oil and Gas Leases: Production ! ! Oil and Gas Leases: Termination ! ! Oil and Gas Leases: Unit and Cooperative Agreements

   An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

APPEARANCES: Thomas W. Whittington, Esq., and Russell S. Jones, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Rio Blanco Natural Gas Company appeals from a decision of the Colorado State Office, Bureau of Land Management, declaring that oil and gas lease C-1490 terminated by cessation of production. That decision was made on remand from an earlier appeal to this Board, Rio Blanco Natural Gas Co., 16 IBLA 243 (1974).

The subject lease was committed to a unit agreement, but no production was obtained in the unit prior to the expiration of the primary term of the lease after April 30, 1972. The lease was therefore not extended pursuant to the provisions of 30 U.S.C. § 226(j) (1970). The lease itself, however, had production from the Huber No. 28-1 Well which was independent of the unit. This production extended the lease beyond its primary term, but the initial decision of the State Office held that production had ceased and the lease terminated on March 1, 1973. In its initial appeal, appellant asserted that the lease not only enjoyed an extension because of production, but also enjoyed a 2 ! year extension because of drilling operations in the unit on April 30, 1972, pursuant to 30 U.S.C. § 226(e) (1970):

> Competitive leases issued under this section shall be for a primary term of five years and noncompetitive leases for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. Any lease issued under this section for land on which, or for which under

> an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities. [Emphasis added.]

Appellant asserted that the No. 20-1 Federal Gardner Well was spudded in on April 30, 1972, and that drilling was diligently pursued until June 8, 1972, when the well was plugged. The well was a unit well but not within the boundaries of C-1490. Appellant contended that the lease was therefore extended through April 30, 1974.

Appellant submitted two letters it had received from the USGS office at Denver, Colorado. The first letter, dated February 1, 1973, informed appellant that it had 60 days in which to begin drilling operations on lease C-1490, failing which, the lease would be terminated by operation of law. 43 CFR 3107.3-1. 1/ The second letter, dated February 9, 1973, stated that appellant should disregard the first letter; it further stated that lease C-1490 had been extended for 2 years due to drilling operations within the unit on April 30, 1972. 43 CFR 3107.2-3. 2/ Because it appeared that the

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1/ Sec. 3107.3-1, Cessation of production, provides:

"A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction."

2/ Sec. 3107.2-3, Period of extension, provides:

"Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end

State Office had not taken cognizance of this information and because it appeared that the information might have a significant effect on the disposition of this case, the Board remanded the case to the State Office for further consideration. The State Office resolved the issue as follows:

> Had drilling operations been in progress at midnight on April 30, 1972 (the end of the primary term of the lease), the lease term would not have been extended. We have been unable to determine that it was the intent of section 17(e) to permit a lessee to opt for a drilling extension if production extending a lease should continue for less than 2 years from the end of the primary term of the lease.

[1] In Alta Vista Resources, Inc., 10 IBLA 45 (1973), the Board interpreted a similar 2!year extension provision. 3/ The Board stated that while Alta Vista was precluded because no drilling

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fn. 2 (continued)
of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities." (Emphasis added.)

3/ Alta Vista involved 30 U.S.C. § 226-1(d) (1970), which was enacted with the extension provision of subsection 226(e) on September 2, 1960, 74 Stat. 781, 789:

"Any lease issued prior to September 2, 1960 which has been maintained in accordance with applicable statutory requirements and regulations and which pertains to land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities."

Subsection 226-1(d) was enacted to give leases issued prior to the Act the same 2!year extension as leases issued after the Act could receive under subsection 226(e). Report of the House Committee on Interior and Insular Affairs, H.R. Rep. 1401, 86th Cong., 2d Sess. 5-6. The two provisions thus should be construed similarly.

operations were in progress at the expiration of the primary term of the lease, the result would have been different had drilling operations been in progress at that time:

> We note that no drilling operations actually were in progress on any of the subject leases, or for their benefit under an approved unit plan of operation, before or on the terminal date of the leases, November 1, 1972. For this reason alone, the 2! year extension requested may not be granted, regardless of whether or not the leases were in their "primary term." An oil and gas lease is not entitled to a 2! year extension under 30 U.S.C. § 226-1(d) (1970), which grants such an extension when the lessee has commenced "actual drilling operations" before the end of its term and is diligently prosecuting such operations at the end of the term, when prior to the expiration date of the lease the only acts undertaken by the lessee are acts preliminary to the actual drilling and the actual drilling is not commenced until after the lease has terminated. Michigan Oil Company, 71 I.D. 263 (1964). If, in fact, "actual drilling operations" had been commenced before the end of the primary term of an oil and gas lease and such operations are being diligently prosecuted at that time, the lease is extended for a period of two years from the end of the primary term by operation of law. No application for such extension is necessary. [Emphasis added.]

Id. at 46-47. Unlike the lessee in Alta Vista, appellant herein alleged the occurrence of drilling operations at the end of the primary term of its lease.

Both 30 U.S.C. § 226(e) and 43 CFR 3107.2-3, supra n. 2, refer to "any lease." In our construction, such a significant word may not be given an insignificant effect. Rockbridge v. Lincoln,

449 F.2d 567, 571 (9th Cir. 1971). By the statute, Congress established two means by which leases may be extended: (1) by production and (2) by drilling. Such extensions devolve upon a lease by operation of law, not upon application by a lessee nor by action of any official. 4/ They are not set forth as alternatives to one another but stand as independent sentences. Under the terms of the statute, a drilling extension is not precluded by the production extension. Such a determination is not indicated in the legislative history, the purpose of the extension provision being to encourage drilling by continuing the lease. 5/ Thus, where two such extensions are simultaneously operative, one for an indefinite term and the other for a fixed term, whichever extension is concluded first leaves the remaining extension in effect. Accordingly, we hold that a lease is automatically extended for 2 years when actual drilling operations were commenced on the lease (or for the lease under a unit

4/ The fact that this is an automatic extension which devolves upon a lease by operation of law distinguishes it from prior extension provisions which required an application by the lessee and which could be precluded by an extension by production. See, e.g., Pan American Petroleum Corp., A-28832 (June 27, 1962); Seaboard Oil Company, 64 I.D. 405 (1957); General Petroleum Corporation, 59 I.D. 383 (1947).

5/ The Senate Interior Committee stated as follows in S. Rep. No. 1549, 86th Cong., 2d Sess. 7:

"[A]llowance of an added 2! year term for existing and future oil and gas leases, if actual drilling is being diligently prosecuted at the end of the primary term, will provide impetus toward exploration for oil and gas and reward those who do so diligently. The added period, it is believed, will not result in an excessively long overall leasing period in view of the time required, under present conditions, to block up areas for exploration, obtain financing, and carry on scientific investigations." (Emphasis added.) 1962 U.S. Code Cong. and Ad. News 3238-39.

plan) prior to the end of the primary term. If the drilling of the No. 20-1 Federal Gardner Well met these conditions, the lease was entitled to a 2! year extension.

Appellant alternatively contends that if its lease was subject to termination by cessation of production on March 1, 1973, the lease was extended by diligent drilling operations on the RB!E-01 Well, another well within the unit, which operations were commenced within 60 days of March 1, 1973:

> [T]he preparations for the nuclear detonation in the RB!E-01 Well which in fact were commenced (or recommenced) on March 14, 1973, and are still being diligently prosecuted constitute reworking or drilling operations which were commenced within 60 days after cessation of production from the Huber No. 1 Well and thereby prevent termination of the Colorado 1490 lease. The Huber No. 1 Well was plugged and abandoned on March 1, 1973. On March 14, 1973, the drill rigs for the emplacement of nuclear devices were moved on site and permission to detonate those devices was granted on April 12, 1973. As shown on page seven of Exhibit E, A.E.C. personnel and other personnel during April began to arrive on site for the detonation phase and the actual detonation actually occurred on May 17, 1973. Clearly, preparations for the detonation began within the 60! day period following the plugging of the Huber Well and thereby constitute reworking or drilling operations within the provisions of Section 17(f) of the Mineral Leasing Act (30 U.S.C.A., Section 226(f)).

These specific assertions were raised for the first time in this appeal. It would therefore be appropriate for the State Office initially to consider these factual assertions with advice of Geological Survey. Such consideration would only be necessary, however,

if the State Office determined that the lease was not extended because the drilling of the No. 20-1 Federal Gardner Well did not meet the conditions of 30 U.S.C. § 226(e) (1970). If the drilling of the well meets those conditions, i.e., it was commenced prior to the expiration of the primary term of the lease and drilling operations were diligently prosecuted at that time, then no consideration need be given to appellant's alternative contention. 6/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for further action consistent herewith.

Joseph W. Goss
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

6/ Appellant also asserted that diligent drilling operations for the nuclear test well were being conducted on March 1, 1973. This matter was on appeal before the Director, U.S. Geological Survey, at the time the instant appeal to the Board was filed. By decision dated July 31, 1975 (GS-69 ! O&G), the Director determined that actual drilling operations with respect to the nuclear test well did not commence until after April 13, 1973, when permission for emplacement and detonation of nuclear explosives was given. This decision was appealed to the Board (IBLA Docket No. 76-176), but at request of the appellant therein, the appeal was dismissed by order dated October 16, 1975.